

**SENT VIA EMAIL**

April 12, 2013

Vera Todorov  
President  
Association of Legal Professionals (ALP)  
c/o City Attorney's Office  
200 E. Santa Clara Street  
San Jose, CA 95113

**RE: City Proposals on Six (6) Outstanding Issues Regarding Memorandum of Agreement for Fiscal Year 2012-2013**

Dear Vera:

In preparation for our negotiation session on Monday, April 15, 2013, please find enclosed proposals for settlement on the six (6) remaining issues that were not included in our Tentative Agreement dated March 22, 2013. The enclosed proposals reflect our understanding of the conversations from our last negotiation session on March 22, 2013, regarding these items which we hope will result in a complete Memorandum of Agreement (MOA) between the City and ALP for Fiscal Year 2012-2013.

**"Agreement Conditions" Language:**

During our last negotiation session, we had discussed revisions to the language on the "Retiree Healthcare Reopener" and language related to email under "Concerted Activity." The enclosed proposal on "Agreement Conditions" reflect our understanding of our discussions.

**"Cost of Living" Language:**

Please find enclosed proposed placeholder language that there will be no general wage increases, or Cost of Living increases, during the term of this agreement.

**"Retiree Healthcare" Language:**

As we have discussed, the language previously proposed by the City regarding Retiree Healthcare relates to the status quo of the funding of these benefits. Language similar to the City's March 12, 2013, proposal is included in the enclosed proposal. However, and based on our prior discussions, the enclosed proposal also includes proposed "reservation of rights" language.

**"Health Insurance" and "Dental Insurance" Language:**

The enclosed proposal on Health Insurance language is similar to the language previously proposed by the City on or about March 12, 2013, and the enclosed "Dental Insurance" language is similar to the language previously proposed by ALP on or about February 6, 2013.

**"Telecommuting" Language:**

Per our prior conversation, we have moved the language proposed by the City on or about March 21, 2013, regarding the Labor Management Committee (LMC) from a side letter to an article in the proposed MOA.

We are hopeful that the enclosed proposals on these issues will bring the parties closer to an agreement on a full MOA. As stated above, we believe the proposals made by the City reflect our understanding of the discussions we have had during our last negotiation session.

We look forward to discussing these further during our meeting on Monday, April 15, 2013.

Sincerely,



Marco Mercado  
Senior Executive Analyst

c: Jennifer Schembri, Deputy Director of Employee Relations  
City Negotiation Team  
ALP Negotiation Team

Enclosure

#### 4. AGREEMENT CONDITIONS

##### 4.1 Full Understanding, Modification and Waiver

4.1.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memoranda of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.

4.1.2 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

4.1.3 Retiree Healthcare Reopener. Notwithstanding any other provision of this Agreement, the parties agree to continue to meet and confer over retiree healthcare benefits and funding upon the request of either party.

Negotiations between the City and the Association shall commence within 14 days upon notice of either party. The City and the Association shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

4.1.4 Measure B Reopener. Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retirement benefits upon request of either party in the event that the pension modification ballot measure, also known as Measure B, in part or in whole, is declared invalid or otherwise modified or changed by any court of competent jurisdiction or any other administrative process, or by any applicable State or Federal law or regulation.

Negotiations between the City and the Association shall commence within 14 days upon notice of either party that any action referenced in the previous paragraph has occurred. The City and the Association shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

**4.2** Separability. Notwithstanding any other provisions of this Agreement to the contrary, in the event that any Article, or subsections thereof, of this Agreement shall be declared invalid by any court of competent jurisdiction, or by any applicable State or Federal law or regulation, or should a decision by any court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this Agreement, or impose additional obligations on the City, the parties shall meet and confer on the Article or subsections thereof affected. In such event, all other provisions of this Agreement not affected shall continue in full force and effect.

**4.3** Concerted Activity It is understood and agreed that:

**4.3.1** No lockout of employees represented by the Association shall be instituted by the City during the term of this Agreement.

**4.3.2** Participation by any employee represented by the Association in a strike, work stoppage or slowdown, or any other concerted activity which diminishes services provided by an employee in this unit, or the failure to perform lawfully required work shall subject the employee to disciplinary action up to and including discharge.

**4.3.3** If the Association, its officers or its authorized representatives violate subsection 4.3.2 above or tolerate the violation of provision 4.3.2 above and after notice to responsible officers or business representatives of the Association has been provided by the City, such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in subsection 4.3.2 above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said Association shall, by action of the Municipal Employee Relations Officer, also be subject to suspension or revocation of the recognition granted to such Association and the Municipal Employee Relations Officer may suspend or cancel any or all payroll deductions payable to or in behalf of members of such Association, and prohibit or restrict the use of any City facility of any nature whatsoever and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the representation unit.

**4.3.3.1** The Association complies with its obligations under this provision if, by 5:00 p.m. of the business day following receipt of the written notice provided by the City, the Association sends, or causes to be sent, to the Association member(s) allegedly violating Section 4.3.2 a written notice that:

- Identifies the alleged conduct in which the Association member(s) is/are engaged in violation of Section 4.3.2 of this Agreement; and
- Provides the Association member(s) with the language of Section 4.3.2; and
- States that the Association does not authorize any conduct violating Section 4.3.2; and
- States that the Association member(s) must comply with Section 4.3.2 and must immediately cease any violation of Section 4.3.2.

**4.3.3.2** The written notice that the Association is required to provide in accordance with this provision may be in the form of an e-mail sent to the known e-mail address of the Association member(s) engaging in the alleged conduct and provided by the City to the Association.

#### **4.4** Non-Discrimination

- 4.4.1** The parties agree that they, and each of them, shall not discriminate against any employee on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual orientation, physical or mental disability, pregnancy, actual or perceived gender identity and political affiliation.
- 4.4.2** The parties agree that they, and each of them, shall not discriminate against any employee because of membership or lack of membership in the Union, or because of any authorized activity on behalf of the Union.

**10. WAGES**

- 10.1** Salary ranges for classifications represented by the Association as of the effective date of this Agreement and set forth in Exhibit A shall remain in effect during the term of this Agreement.
- 10.2** There shall be no general wage increases (or Cost of Living Adjustments) during the term of this Agreement.

**16. RETIREE HEALTHCARE**

**16.1** Employees may be eligible to receive retiree healthcare benefits, in accordance with the San Jose Municipal Code.

**16.2** Effective June 28, 2009, the City and employees represented by the Association began transitioning from the current partial pre-funding of retiree healthcare benefits to full pre-funding of the Annual Required Contribution (ARC) over a period of five years. The Federated Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty-year period so that it shall be paid by June 30, 2039 (closed amortization).

The cash contribution rate for plan members shall not have an incremental increase of more than 0.75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than 0.75% of pensionable pay in each fiscal year. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.385 of the San Jose Municipal Code.

**16.3** Neither the City nor the Association waive any rights or assertions related to Retiree Healthcare through any of the provisions of this Agreement. This Agreement shall not be considered a waiver by the Association or the employees represented by the Association of any rights or assertions regarding Retiree Healthcare, including but not limited to issues related to vested rights. Likewise, the City does not waive any rights or assertions it may have, including but not limited to those under the Meyers-Milias-Brown Act ("MMBA") regarding matters within the scope of representation. Nothing in this section is intended to expand either party's rights

**18. HEALTH INSURANCE**

**18.1** The City will provide health coverage for eligible employees and their dependents in accordance with one of the available plans.

**18.2** During the term of this Agreement, the City will continue to make available at least one of each type of the health coverage plans set forth in Subsections 16.2.1 through 16.2.3. In the event that the City is unable to make one of the foregoing types of plans available, the parties will meet and confer over a replacement plan.

The City may offer any other additional health coverage plans at its discretion, including but not limited to the Kaiser 1500 deductible plan.

**18.2.1** Non-Deductible HMO. A non-deductible health maintenance organization ("Non-Deductible HMO"), that include the following co-pays:

- (a) Office visit co-pay of \$25,
- (b) Prescription co-pay of \$10 for generic and \$25 for brand name,
- (c) Emergency room co-pay of \$100, and
- (d) Inpatient/outpatient procedure co-pay of \$100.

**18.2.2** Non-Deductible POS. A non-deductible point of service plan.

**18.2.3** Non-Deductible PPO. A non-deductible preferred provider organization.

**18.3** Premium: Effective December 23, 2012, for full time employees, the City pays eighty-five percent (85%) of the cost of the lowest priced Non-Deductible HMO plan for the employee or the employee and dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced Non-Deductible HMO plan.<sup>1</sup> If the employee selects a plan other than the lowest priced Non-Deductible HMO plan, the employee pays the difference between the total cost of the selected plan and the City's contribution toward the lowest priced Non-Deductible HMO plan. In the event that an employee chooses a plan that is lower cost than the

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<sup>1</sup> The City's contribution is prorated as follows for part-time employees based on hours scheduled:

- 30 – 39 hours = 75%
- 25 – 29 hours = 62.5%
- 20 – 24 hours = 50%
- Less than 20 hours = none



City's contribution toward the lowest priced Non-Deductible HMO Plan, the employee shall pay nothing towards the premium. However, the City's contribution will continue to be based on eighty-five percent (85%) of the cost of the lowest priced Non-Deductible HMO plan (at the rate most recently provided to the City).

- 18.4** Dual Coverage: An employee may not be simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee or retiree.

**19. DENTAL INSURANCE**

- 17.1** The City will provide dental insurance for eligible employees and their dependents in accordance with one of the two available plans, one of which is an indemnity plan and the other of which is a dental health maintenance organization plan. Both of these plans are described in detail in the City of San Jose Employee Benefits Handbook and in pamphlets available in the Human Resources Department. In the event that the City is unable to make one of the foregoing types of plans available, the parties will meet and confer over a replacement plan.
- 17.2** For full-time employees, the City will pay 100% of the lowest priced plan for the employee or the employee and dependent coverage.<sup>1</sup> For any other plan, the City will pay 95% for the employee or the employee and dependent coverage.
- 17.3** An employee may not be simultaneously covered by City-provided dental benefits as a City employee, and as a dependent of another City employee or retiree.

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<sup>1</sup> The City's contribution is prorated as follows for part-time employees based on hours scheduled:

- 30 – 39 hours = 75%
- 25 – 29 hours = 62.5%
- 20 – 24 hours = 50%
- Less than 20 hours = none

**42. TELECOMMUTING**

Representatives of the City Attorney's Office management team will meet with representatives of the Association for the purposes of discussing telecommuting and alternative work schedules for employees represented by the Association in the City Attorney's Office, in a Labor Management Committee (LMC). LMCs are not authorized to meet and confer, to create contractual obligations, to modify the Memorandum of Agreement, or to authorize any practice in conflict with existing contracts, rules, City policies, or the City Attorney's discretion.